

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 28 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

WILLIAM KIPKORIR CHIRCHIR.....1ST ACCUSED

GODFREY KIPNG'ETICH KIRUI.....2ND ACCUSED

RULING

Three witnesses have testified for the prosecution. On 19th February 2019 this matter was adjourned to continue on 24th, 25th, 26th, 27th and 28th June 2019. When this court resumed sitting to hear this matter on 24th June 2019, Mr. Robert P. Onyango, learned counsel, addressed the court that he has been instructed to act for the two accused persons in this matter. Mr. Onyango told the court that upon taking instructions to represent the accused persons, he wrote to the court on 19th June seeking to have the matter mentioned on 20th June 2019 to enable him to make an application. Mr. Onyango explained that he was trying to avoid making that application on the date of hearing to avoid inconveniencing the court and other parties.

The main issue Mr. Onyango wanted to raise was to seek to be supplied with committal bundles because he was not able to get these from the former counsel representing the accused persons. There was also the issue of accessing typed proceedings to enable him prepare the case for his clients.

The application was opposed by Mr. Mbanya and Mr. Kamau for the victims. I however allowed the application and directed that we resume hearing on 26th June 2019. On that day Mr. Onyango told the court that he was not able to receive typed proceedings in time and that he had endeavoured to read the proceedings despite the delay in being supplied with the same. He told the court that after reading the proceedings it had become necessary to recall PW1, PW2 and PW3 for cross examination because in his view there were gaps in the cross-examination of these witnesses. He also said he wanted to build his case and that this cannot be done until he has cross-examined further the witnesses who have already testified.

Again this application was opposed by the prosecution counsel and counsel for the victims. The latter submitted that their clients were traumatized by the lengthy cross-examination by the former counsel for the accused.

I have considered the issues at hand. It is true that Mr. Onyango wrote to the court on 12th June 2019. The letter was received in court on 19th June 2019 and placed in the court file. The file was placed before me on 20th June 2019 for directions. I directed that the matter be dealt with during the hearing on 24th June 2019.

I am mindful of the rights of the accused persons and the victims in this matter. Among the rights of an accused person under Article 50 of the Constitution is the right to have adequate time and facilities to prepare the defence, (Article 50 (c)), and the right to choose and be represented by an advocate and to be informed of that right promptly, (Article 50 (g)). The accused persons have changed the advocate representing them and this is within their rights. Given what I have stated above in regard to the efforts Mr. Onyango has put in place to have the matter mentioned earlier than on the hearing date and the directions by this court, it is my view that the action of seeking more time to prepare for the defence and application to recall witnesses is not ill-intended. Perhaps had the letter received in court on 19th June 2019 been clearer as to the nature of the application sought, this court would have handled it differently. It should be recalled that the file was brought to my attention on 20th June 2019 on a Thursday when the hearing was scheduled for Monday 24th June 2019.

I have considered the application and the responses. My view is that the accused persons are within their rights to seek more time to allow their new counsel acquaint with the matter. Since the only issue now unresolved is the one on recalling witnesses, I hereby allow the application to recall George Kirubi Githima (PW1), Faith Wangchi Kimangu (PW2) and Bernard Chege Githima (PW3) for further cross-examination. However, given the detailed cross-examination they have undergone, I direct that the cross-examination should not be a repetition of what they have already been cross-examined on but on any area that defence feel was not properly covered. This directive should be strictly adhered to. The prosecution shall exercise their right to re-examine. I order so.

Dated, signed and delivered this 28th June 2019.

S. N. Mutuku

Judge